

CUNA & Affiliates

March 31, 2003

Chief of Records

A TIN: Request for Comments Office of Foreign Assets Control Department of the Treasury
1500 Pennsylvania Ave., N. W. Washington. D.C. 20220

RE: Updated OFAC Internal Economic Sanctions Enforcement Guidelines (31 C.F.R. 501)

Dear Sir or Madam:

The Credit Union National Association (CUNA) appreciates this opportunity to comment on the Office of Foreign Assets Control's (OFAC's) updated version of its internal Economic Sanctions Enforcement Guidelines (Guidelines). The Guidelines contain the agency's procedures for determining whether an economic sanctions violation has occurred and outline the range of enforcement options available. The proposed updated Guidelines will serve as a general procedural framework to promote consistency in the enforcement process while allowing for the appropriate exercise of agency discretion. CUNA represents over 90% of our nation's more than 10,100 state and Federal credit unions.

CUNA commends OFAC's efforts to update its Guidelines as well as the intent behind the effort, which is "to promote the transparency of OFAC's procedures and better inform the regulated community." We believe that publishing the Guidelines in the Code of Federal Regulations as an appendix to the other OFAC regulations will assist regulated entities in understanding the OFAC enforcement process. Moreover, publication of the Guidelines will make it easier for more compliance and management personnel at regulated entities to read the Guidelines, thereby serving as further deterrence to potential OFAC violations. In this regard, we suggest that the Guidelines also be posted on the OFAC website so they may be even more easily accessible.

CUNA would like to make several recommendations regarding the substance of the Guidelines. We believe that, as noted in the updated version of the Guidelines, there are situations in which it would be appropriate to issue a financial institution a warning letter instead of a proposed civil penalty. Based on the feedback received from some of our members, we believe OFAC should consider sending a warning letter instead of a prepenalty notice when the institution is very small given [that any significant fine may force the institution to either merge with another institution or cease operations completely. The National Credit Union Administration (NCUA) is considering comments received on a recent proposal to revise the definition of small credit union for

purposes of the Regulatory Flexibility Act. In our comment' letter to NCUA, CUNA pointed out only 47% of credit unions with assets of over \$50 million have a paid compliance director; and only 16% of credit unions with assets of up to \$50 million have full-time staff whose work is devoted exclusively to regulatory compliance. We stated our belief that it is entirely appropriate for NCUA to consider raising the threshold to at least \$50 million in assets or higher. We feel the \$50 million figure would also be a reasonable threshold for OFAC to consider in determining whether a warning letter should be sent instead of a prepenalty notice.

Further, although most large financial institutions use specialized tracking or "interdict" software for purposes of OFAC compliance, such software is prohibitively expensive for many small credit unions. CUNA basically agrees that the Guidelines encompass appropriate factors for aggravation or mitigation of civil penalties. While we do not think the list of mitigating factors in the Guidelines should be exhaustive, it is important that the Guidelines include small asset size as a mitigating factor. A small credit union or other institution has less ability to absorb a high penalty than a larger one. We recommend that the penalty be pro-rated to the size of the entity involved.

In a related point, we have heard from many of our members that it is very difficult to comply with the OFAC regulations requiring them to review every paper check to ensure that none of the parties to the check are listed on OFAC's Specially Designated Nationals and Blocked Persons List. Some credit unions that conduct manual reviews of paper checks against the OFAC list (and in some cases undertake significant efforts to verify the identity of individual(s) listed on the check) have found that such review can result in lengthy delays in check processing. We are anxious to work with OFAC to relieve regulatory barriers that could impede compliance with current OFAC requirements. In that connection, we will be following up this letter by requesting a meeting with OFAC staff to begin a dialogue on how we can work with OFAC to address this and other issues related to regulatory burden.


Finally, CUNA favors including in the Guidelines a provision allowing for reduced penalties for voluntary disclosure of OFAC violations. However, we do not *feel* the updated provision stating that the proposed penalty would be mitigated by at least 50% is as effective an incentive as it could be. While a 50% reduction in the proposed penalty would serve as a significant motivation for an institution potentially facing a *small* penalty to voluntarily report, it would not be as strong a motivator for an institution potentially facing a high penalty. In our opinion, no penalty should be assessed for reporting first offenses; and penalties for subsequent violations that are voluntarily reported should be mitigated by at least 50% or more. Low penalties for voluntarily reporting will motivate a larger number of institutions to come forward, thereby increasing the overall availability and timeliness of information provided to OFAC and other law enforcement agencies. OFAC, in turn, will be able to use the information to better enforce its economic sanctions programs.

With the recommendations made above, CUNA believes the updated Guidelines will be more transparent and understandable to credit unions and other entities regulated by OFAC and will encourage greater compliance with the OFAC sanctions program.

Thank you for the opportunity to share our comments. If you have any further questions, please contact Mary Dunn

(mdunn@cuna.com) or Catherine Orr (corr@cuna.com) at our e-mail addresses or at (202) 638-5777.

Sincerely,

A handwritten signature in black ink that reads "Mary Mitchell Dunn". The signature is written in a cursive, slightly slanted style.

Mary Mitchell Dunn Associate General Counsel

Catherine Orr
Senior Regulatory Counsel